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Program/Division: Administrative Appeals Unit

CDEC Tracking No.: 2023-08-015

CCR Number(s): 8 CCR 1406-1

SOS Tracking No.: TBD

**RULEMAKING PACKET**

Reason and Justification of the proposed rule or amendment(s):	<p>Compliance with Federal and/or State laws, mandates, or guidelines ▾</p> <p>If there are “Multiple/Other” reasons, please explain:</p>
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	<p>The purpose of these new and revised rules are to transfer existing rules from the Colorado Department of Human Services (CDHS) to the Colorado Department of Early Childhood (CDEC); establish an appeals process for Local Coordinating Organizations (LCO); and update rule numbering, statutory references, and provide a general cleanup of the rule language for clarity. These rules were adopted on an emergency basis to ensure CDEC had effective administrative appeals rules before the inter-agency agreement with CDHS terminates on December 30, 2023.</p>
Statutory Authority: (Include Federal Authority, if applicable)	<p>Sections 26.5-1-105(1)(a), 26.5-2-105(5), 26.5-4-108(1)(a), 26.5-4-111, 26.5-5-314, and 24-4-103(6)(a), C.R.S.</p>
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	<p><input type="checkbox"/> Yes <span style="margin-left: 200px;"><input checked="" type="checkbox"/> No</span></p> <p>If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:</p>
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	<p><input checked="" type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span></p> <p>If Yes, provide description:</p> <p>These rules have direct impacts to County departments’ operations and are “new” to the Colorado Department of Early Childhood, however, these are existing requirements transferred from the Colorado Department of Human Services.</p>
Effective Date(s) of proposed rule or amendment(s): (Emergency/Permanent)	<p><input checked="" type="checkbox"/> Mandatory <span style="margin-left: 200px;"><input type="checkbox"/> Discretionary</span></p> <p>(E) Effective Date: 12/30/23 <span style="margin-left: 100px;">(P) Effective Date: 3/16/24</span></p>

	(E) Termination Date: 4/27/23										
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	<input checked="" type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span> If no, please explain:										
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input checked="" type="checkbox"/> No</span> If Yes, please explain:										
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input checked="" type="checkbox"/> No</span> If Yes, explain why:										
Does the proposed rule or amendment(s) include material that is incorporated by reference <sup>1</sup> ?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input checked="" type="checkbox"/> No</span> If Yes, provide source:										
Does the proposed rule or amendment(s) align with the department's rulemaking objectives?  Choose all that apply.	<table border="1"> <tr> <td><input type="checkbox"/></td> <td>Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Decrease duplication and conflicts with implementing programs and providing services.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Increase equity in access and outcomes to programs and services for children and families.</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Increase administrative efficiencies among programs and services provided by the department.</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.</td> </tr> </table>	<input type="checkbox"/>	Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.	<input type="checkbox"/>	Decrease duplication and conflicts with implementing programs and providing services.	<input type="checkbox"/>	Increase equity in access and outcomes to programs and services for children and families.	<input checked="" type="checkbox"/>	Increase administrative efficiencies among programs and services provided by the department.	<input checked="" type="checkbox"/>	Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.
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<sup>1</sup> Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

## Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent <sup>2</sup> [Permanent Tier I or Tier II]	Emergency and Permanent ▾
	N/A (Emergency and Permanent) ▾
Stakeholder Engagement:	List of activities and dates:
Public Folder: Proposed rule, webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	Email and post draft rules on the <a href="#">CDEC Public Notices webpage</a> , to solicit stakeholder feedback: 10/17/23 - 10/25/23
	Public folder containing all rulemaking material: <a href="https://drive.google.com/drive/folders/10AvH6BZoEouBxImdHcywPGJpBWCzzNdK">https://drive.google.com/drive/folders/10AvH6BZoEouBxImdHcywPGJpBWCzzNdK</a>
Assistant Attorney General Review:	10/31/23 - 11/29/23
RAC County Subcommittee Review Date (if required):	12/7/23 (Emergency Rule)  1/4/24 (Permanent Rule)
Rules Advisory Council (RAC) Review Date:	12/14/23 (Emergency Rule)  1/11/24 (Permanent Rule)
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	12/29/23 (Emergency Adoption)  1/25/24 (Permanent Adoption)

<sup>2</sup> Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

## Regulatory and Cost Benefit Analysis

1. **Community Impact:** Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

The consolidation of the appeals rules related to Colorado Child Care Assistance Program (CCCAP), Child Care Licensing, and Universal Preschool Colorado allow participants to easily access rules that apply to them in one location. This ensures ease of access as well as clarity, ultimately leading to more informed stakeholders.

The CCCAP appeals rules reflect current practices. Any revisions made to the existing rules were done so to clarify the current processes, creating a positive impact on families and counties.

The Local Coordinating Organization (LCO) appeals rules will bring administrative ease and a new system to allow potential and current early childhood entities to better position themselves as potential candidates for being selected as an LCO.

Additionally, having all of CDEC's appeals-related rules in one place will make stakeholder's lives more simply by having not just all of the different programs in one place, but by having unified rule sections that cut across multiple programs and service areas with uniformity.

2. **Quality and Quantity:** Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).

Any revisions made to the existing CCCAP appeals rules were done so to clarify the current processes, creating a short term positive impact on counties as there are no new rules to implement.

Currently, the LCO appeals process is not in rule. Failure to enact these rules will result in confusion for the field and an abandonment of a statutory requirement.

This holds true similarly as well, for the general appeals provisions. CDEC is a brand new agency and needs to enact these rules to (i) conform to statute; (ii) give clarity on process to the field; and (iii) create avenues of recourse for stakeholders who feel unfairly aggrieved.

While these rules will result in some amount of administrative burden, this is because in those instances, the systems literally didn't exist, and this is the initial enactment thereof. Meanwhile, these rules and appeals ecosystem have been structured conscious of how many different programs and services local county departments and CDEC are responsible for and how those programs and services cut across multiple different populations concurrently.

3. **Potential Economic Benefits/Disadvantages:** What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?

These appeals rules aren't particularly economic-focused, however, they certainly will have positive ancillary benefits that are economic-related to individuals involved in the appeals system. These rules lay out what the process is for different programs, who is responsible for what, what timelines have to be adhered to, and which governmental entity owns which parts of the process. This

explicitness and departmental-wide approach will make planning, scheduling, and navigating the appeals process easier for individuals.

4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate “not applicable.”

Department	<p>As CDEC will be taking on administrative appeals for the first time as a new agency beginning in approximately January, the staff and resources required to properly serve notice and documentation, to complete the Final Decisions, and to perform other state-level responsibilities entailed in these rules, is all new.</p> <p>While some of the appeals processes contained in this rule has previously been performed by OEC prior to the establishment of CDEC as a department, this does not account for the centralized functioning of an Administrative Appeals Unit, which is brand new for CDEC and will be taking on both old OEC responsibilities currently housed under CDHS’s Office of Appeals, and new responsibilities caused by increased programming and services.</p>
Local Governments/ Counties	Not applicable - These are existing rules and regulations. There are no additional costs for local governments/counties associated with transferring these rules to the new Department (CDEC).
Providers	Not applicable - These are existing rules and regulations. There are no additional costs for providers associated with transferring these rules to the new Department (CDEC).
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	There are no direct or indirect costs for community partners to implement these rules.
Other State Agencies	No impact of other state agencies.
Tribal Communities	No impact on Tribal Communities.

5. **Evaluation:** How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

Rules surrounding administrative appeals must conform to strict statutory requirements and court rules and procedures. OAC is consulted as part of the process. Furthermore, CDEC will have an Administrative Appeals Unit that is responsible for monitoring compliance with the rules. CDEC will then have its work and oversight checked by the judicial system as a co-equal branch of government.

Rather than looking at a metric which attempts to measure programmatic success, we can simply look at the requirements contained within the rules and the laws which they originated from, and see if CDEC is following said rules and requirements precisely. This is an area which does not allow for failure, since it would result in the curtailing of an individual or entity's rights when engaged in appealing a decision/action of CDEC.

**6. Comparative Analysis: Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.**

These rules must be promulgated for the reasons previously identified regarding statutory compliance and practical reality for the stakeholders involved. Thus, this would be looking at ways we could draft the rules differently.

However, even here, we are guided by court procedures, administrative rights of individuals, and statutory requirements. But, where discretion exists, these rules are designed in a manner to allow individuals access to resources which will help them in their appeal, and thus lead to more expeditious and judicious outcomes. The benefit here is fairness and equity, at the slight expense of further work and burden on the governmental entities involved.

**7. Comparative Analysis: Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.**

There are no other conceivable methods that were identified to conduct administrative appeals in a fair and just manner.